



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-0023]

RIN 1625-AA00

Safety Zone; Transit Restrictions, Lower Mississippi River Mile Marker 311.0 – 319.0

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is extending an established safety zone for emergency purposes for all waters of the Lower Mississippi River (LMR), extending the entire width from mile 311.0 to mile 319.0 above head of passes (AHP). This emergency safety zone is needed to protect persons, property and flood control infrastructure from the potential safety hazards associated with vessels underway transiting this area. Deviation from the safety zone is prohibited unless specifically authorized by the Captain of the Port Lower Mississippi River or a designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until 11:59 p.m. on February 1, 2016. For the purposes of enforcement, actual notice will be used from 12:01 a.m. on January 9, 2016 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2016-

0023]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LT Tyrone L. Conner, U.S. Coast Guard; telephone 901-521-4825, e-mail Tyrone.L.Conner@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

AHP	Above head of passes
CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive order
FR	Federal Register
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code
COTP	Captain of the Port
LMR	Lower Mississippi River
USACE	U.S. Army Corps of Engineers

II. Background Information and Regulatory History

This temporary rule extends the location for the safety zone under 33 CFR 165.802, which provides for a safety zone on the Lower Mississippi River extending from mile 311.5 to 316.1 AHP. This temporary rule extends that location to mile 311 to 319 AHP for emergency purposes responding to high water. The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable,

unnecessary, or contrary to the public interest.”

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is needed to protect persons, property and flood control infrastructure from the potential safety hazards associated with vessels underway transiting this area. Completing the full NPRM process is impracticable and contrary to the public interest because we must establish this safety zone in response to increasing high water and possible flood and high water operations taking place between January 9 and February 1, 2016. Completing the NPRM process would delay the additional safety measures necessary to protect persons, property and flood control infrastructure from the hazards associated with vessels underway.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the Federal Register. Delaying the effective date of this rule would be impracticable and contrary to the public interest because we must establish this safety zone in response to increasing high water and possible emergency operations taking place between January 9 and February 1, 2016.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231.

The Coast Guard received notification from the New Orleans District, Army Corps of Engineers that there is a high possibility that flood control infrastructure from mile 311.0 to mile 319.0 AHP on the Mississippi River will sustain damage if immediate action isn't taken to reduce the effects of normal traffic patterns during high water.

Additionally, if the flood control infrastructure is sufficiently weakened by resulting effects of high water during this period it could fail. Loss of this section of the main line infrastructure system would be catastrophic to large sections of Louisiana. The COTP Lower Mississippi River is establishing this safety zone as an extension of the established regulation at 33 CFR 165.802, effective from 12:01 a.m. January 9, 2016 to 11:59 p.m. February 1, 2016 or until the river flood levels decrease, whichever occurs earlier.

IV. Discussion of the Rule

The Coast Guard is extending the location for the safety under 33 CFR 165.802 for emergency high water response purposes. As established, 33 CFR 165.802 provides for a safety zone as follows:

- The area enclosed by the following boundary is a safety zone—from the Black Hawk Point Light, mile 316.1 AHP LMR to a point opposite Ft. Adams Light, mile 311.5 AHP along the low water reference plane above the right descending bank; thence to the levee on a line perpendicular to the channel centerline; thence along the levee to the upstream end of the Old River Overbank structure; thence along a line to the Black Hawk Point Light.
- Any vessel desiring to enter this safety zone must first obtain permission from the Captain of the Port, New Orleans. The resident engineer at Old River Control Structure (WUG-424) is delegated the authority to permit entry into this safety zone.

This rule extends the published location to mile 311.0 to mile 319.0 AHP, extending the entire width of the river and is effective from 12:01 a.m. January 9, 2016 through 11:59 p.m. on February 1, 2016 or until the river flood levels decrease, whichever occurs earlier.

Entry into this zone is prohibited unless permission has been granted by the COTP Lower Mississippi or a designated representative or by the authority as delegated in 33 CFR 165.802. Broadcast Notice to Mariners (BNM) will provide any changes in the schedule for this safety zone. Deviation requests will be considered and reviewed on a case-by-case basis. The COTP Lower Mississippi River may be contacted by telephone at 1-866-777-2784 or can be reached by VHF-FM channel 16.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and

time-of-year of the safety zone. This emergency safety zone will restrict navigation on the Mississippi River from mile 311.0 to mile 319.0 AHP in the vicinity of Ft. Adams Light and Black Hawk Point Light from 12:01 p.m. January 9, 2016 through 11:59 p.m. on February 1, 2016, or until the river flood levels decrease, whichever occurs earlier. Notifications to the marine community will be made through BNM, LNM, and communications with local waterway users. Notices of changes to the safety zone and effective times will also be made. Additionally, deviation requests may be made and will be considered and reviewed on a case-by-case basis.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact

the person listed in the FOR FURTHER INFORMATION CONTACT section.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted

for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves an emergency safety zone that will prohibit entry into this zone unless permission has been granted by the COTP Lower Mississippi or a designated representative on the Mississippi River mile 311.0 to mile 319.0 AHP. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping

requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1; 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. A new temporary § 165.T08-0023 is added to read as follows:

§ 165.T08-0023 Safety Zone; Mississippi River, Mile Marker 365.0 to 354.0.

(a) Location. The following area is an emergency safety zone: all waters of the Mississippi River between mile 311.0 and mile 319.0, extending the entire width of the river.

(b) Enforcement date. This rule is effective from 12:01 a.m. on January 9, 2016 through 11:59 p.m. on February 1, 2015, or until the river flood levels decrease, whichever occurs earlier.

(c) Regulations. (1) In accordance with the general regulations in § 165.23, entry into this zone is prohibited unless specifically authorized by the COTP Lower Mississippi River or a designated representative.

(2) Any vessel desiring to enter this safety zone must first obtain permission from the Captain of the Port, New Orleans. They may be contacted on VHF-FM Channel 16 or by telephone at 866-777-2784. The resident engineer at Old River Control Structure (WUG-424) is delegated the authority to permit entry into this safety zone.

(d) Informational broadcasts. The COTP Lower Mississippi River or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the emergency safety zone as well as any changes in the dates and times of enforcement.

Dated: January 7, 2016.

T. J. Wendt,
Captain, U.S. Coast Guard,
Captain of the Port, Lower Mississippi River.
[FR Doc. 2016-01632 Filed: 1/26/2016 8:45 am; Publication Date: 1/27/2016]